IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.87 OF 2002

IN

WRIT PETITION NO.674 OF 1998

Vijaya Bank ...Appellants

v/s

Vijaya Bank Workers Organisation and ors. ...Respondents

Mr R.S. Pai with Mr H. Mehta i/b M/s Haresh Mehta and Co. for Appellants.

Mr M. Desai for Respondent No.2.

CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.

DATE : 16TH OCTOBER 2007.

P.C. :-

1. By this appeal, the appellants challenge the order dated 9th November 2001 passed by the learned Single Judge of this Court in writ petition No.674 of 1998. By that order, the learned Single Judge has dismissed the writ petition filed by the petitioners. The petitioners had filed writ petition challenging the award made by the Central Government Industrial Tribunal dated 17th October 1996. The relevant facts are that the respondent No.2 was in the employment of the appellant - Bank. He was placed under suspension and a charge-sheet was served on him. The charge against him was that he had issued a cheque from account of a customer which was closed, in favour of his cousin for Rs.10,000/-, which cheque was presented for payment to the Vijaya Bank where his cousin had an account and payment was made. A departmental enquiry was held and punishment of withholding of six increments was imposed. The dispute was referred to the Central Government Industrial Tribunal. By part I of the award, the Central Government Industrial Tribunal held that the enquiry was not properly conducted. Therefore, the appellants were given an opportunity to lead evidence before the Central Government Industrial Tribunal which

was led by the appellants. The Tribunal, after appreciating the evidence led by the appellants, made the award holding that the charge is not proved against the respondent No.2 and therefore, the punishment of withholding six increments was set aside. The appellants were directed to release the amount of increments.

2. In writ petition filed in this Court, that award was challenged and the writ petition, as observed above, has been rejected. We have heard learned counsel appearing for appellants at length. We find that during the departmental enquiry, Mr Pradeep Hegde, alleged to be the cousin of the respondent, was examined as a witness but before the Tribunal, he was given up and was not examined as a witness. He was the only witness who could have proved that the cheque was given to him by the respondent.

3. The Tribunal, in our opinion, has correctly observed that there is no direct evidence led by the appellants to establish that the cheque from the closed account was given to Mr Pradeep Hegde by the respondent. In order to prove the misconduct, it was necessary for the appellants to prove by direct evidence that the cheque was issued by the respondents. We find from the evidence that it is also not proved that the respondent

No.2 was in possession of the cheque. We are in total agreement with the finding recorded by the Tribunal that giving up Mr Pradeep Hegde as a witness was fatal. It is only Mr Pradeep Hegde who could have thrown light as to in what circumstance he came to be in possession of the cheque.

4. The learned counsel appearing for appellants invited our attention to the statements made in the reply field by the respondent. Perusal of those statements shows that when the respondent found in the bank that there were certain allegations made against his cousin, he tried to help his cousin. By no stretch of imagination, the statements made by the respondent in the reply can be treated to be in any way admission of the guilt by the respondent.

5. In our opinion, as held by the Industrial Tribunal and the learned Single Judge that as a matter of fact the appellants have failed to prove guilt of the respondent, it will not be appropriate for us to interfere with the order impugned in this appeal when both the Courts below have recorded a concurrent finding. Appeal therefore fails and is dismissed. No order as to costs.

. Parties to act on the copy of this order duly

authenticated by the Associate / Private Secretary as

true copy.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(J.H. BHATIA J.)